

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MOVSES MARJANIAN, Individually and on)
Behalf of All Others Similarly Situated,) 3:14-cv-0175-LRH-WGC
Plaintiff,)

v.) ORDER

ALLIED NEVADA GOLD CORP., SCOTT)
A. CALDWELL, ROBERT M. BUCHAN,)
RANDY E. BUFFINGTON, STEPHEN M.)
JONES,)
Defendants.)

JANET MARTINEZ, Individually and on)
Behalf of All Others Similarly Situated,) 2:14-cv-0650-JCM-VCF
Plaintiff,)

v.)
ALLIED NEVADA GOLD CORP., SCOTT)
A. CALDWELL, ROBERT M. BUCHAN,)
RANDY E. BUFFINGTON, STEPHEN M.)
JONES,)
Defendants.)

Before the Court is plaintiff Richard Heil and State-Boston Retirement System's ("Heil/Boston") Motion for Reconsideration of the Court's prior Order appointing Andrey Slomnitsky ("Slomnitsky") as lead plaintiff in a class action lawsuit against Defendant Allied Nevada Gold Corporation ("Allied Nevada"). Doc. #70.¹ Slomnitsky filed an Opposition (Doc. #71), to which Heil/Boston Replied (Doc. #72).

¹ Refers to the Court's docket number.

I. Facts and Procedural Background

This is a federal securities class action on behalf of investors who purchased stock of Allied Nevada between January 18, 2013, and August 5, 2013. Doc. #1 ¶1. Allied Nevada is a Nevada-based gold producer focused on mining and development in Nevada. *Id.* ¶2. In early 2013, Allied Nevada announced record production for the fourth quarter of 2012, but added that the company fell short of its production guidance due to “record cold temperatures” that were “adversely affecting” its operations. *Id.* ¶4. Soon after, Allied Nevada represented to investors that the company was “back on track” and that the problems had been solved, in addition to other remarks allegedly designed to encourage investment. *Id.* ¶¶5, 39-70. In one instance, Allied Nevada President and CEO Scott Caldwell represented that Allied Nevada was “going to have a very strong quarter or a better quarter this quarter than last.” *Id.* ¶42. Plaintiffs allege that these statements, and others, led to artificially inflated prices. *Id.* ¶6.

One of Allied Nevada’s central operations recovers gold and silver from oxide ores using a technique that extracts ore from an open pit, crushes it, and places it on impermeable leach pads where the ore is “doused with a weak cyanide solution that dissolves the gold from the ore.” *Id.* ¶3. Despite Allied Nevada’s statements that production was back on track, the Lewis leach pad—one of the company’s three leach pads—“was beset with operating defects and production deficiencies” that “caused the Company’s production costs to skyrocket during the Class Period and resulted in large amounts of unprocessed ore to build up” on Allied Nevada’s leach pads. *Id.* ¶7. This process consumed a significant portion of the funds that Allied Nevada intended to use for a business expansion. *Id.*

On April 30, 2013, Allied Nevada issued a press release announcing disappointing results for the first quarter of 2013. *Id.* ¶63. The press release represented that “uncommonly inclement weather” and “increased mining costs . . . negatively impacted our production costs and adjusted cash costs per ounce.” *Id.* The press release also stated that despite these unexpected occurrences, “[r]evenue increased 25% in the first quarter of 2013” compared to the first quarter of 2012, and that production from the Hycroft mine increased seventeen percent for gold and thirteen percent for silver. *Id.* Additionally, sales for that quarter “surpassed that of the same

1 period in 2012 by 34% for gold and 36% for silver.” *Id.* The Complaint adds that Allied
2 Nevada’s Form 10-Q, also filed on April 30, 2013, “contained materially false and misleading
3 representations about Allied Nevada’s risk factors, its management’s discussion and analysis, its
4 disclosure controls and false misleading certifications thereon.” *Id.* ¶67. Despite Allied
5 Nevada’s assurances of strong production and sales compared to the first quarter of 2012, the
6 company’s stock dropped \$1.91 per share in two days, from \$11.83 at the close of trading on
7 April 29, 2013, to \$9.92 on May 1, 2013. *Id.* ¶71.

8 On May 2, 2013, Allied Nevada filed an automatic shelf registration statement on Form
9 S-3 with the Securities Exchange Commission. *Id.* ¶72. On May 9, 2013, Allied Nevada filed an
10 amendment to the registration statement, offering to sell fourteen million shares of Allied Nevada
11 stock in a secondary public offering (“SPO”). *Id.* ¶73. The registration statement and
12 amendment did not disclose the material defects and production problems of the Lewis leach pad,
13 or the company’s increased production costs and reduced operating income and cash flow. *Id.*
14 ¶75. On May 17, 2013, Allied Nevada announced the closing of its sale of fourteen million
15 shares in the SPO at \$10.75 per share. *Id.* ¶85.

16 On July 22, 2013, Allied Nevada issued a press release announcing that growth in the
17 second quarter had been slower than expected, and noting that “a significant portion of the ore
18 placed on the Lewis leach pad . . . had not been properly leached due to insufficient solution
19 application.” *Id.* ¶89. The Complaint states that this statement, and others during the class
20 period, was “materially false and misleading when made because they misrepresented and failed”
21 to disclose a number of facts, including the specifics of the Lewis leach pad defects, and the
22 company’s significant cash flow problems. *Id.* ¶90.

23 On August 6, 2013, Allied Nevada announced that its production costs had increased
24 dramatically and would continue to rise because of the operating defects at the Lewis leach pad.
25 *Id.* ¶8. In essence, the company stated that it would have to double its fresh water usage and
26 replace the existing irrigation tubing, piping, and pumping infrastructure to remedy its production
27 deficiencies. *Id.* Allied Nevada also stated that it would indefinitely suspend its planned
28 expansion as a result of the Lewis leach pad deficiencies. *Id.* ¶9. Following this announcement,

1 Allied Nevada's stock dropped significantly, from \$5.90 per share at the close of trading on
2 August 5, 2013, to \$3.73 per share at the close of trading on August 7. *Id.* ¶10. Weeks before
3 the deficiencies were revealed, Allied Nevada sold \$150,500,000 in shares in the SPO. *Id.* ¶11.

4 Movses Marjanian filed suit in the District of Nevada, Reno on April 3, 2014. Doc. #1.
5 Heil/Boston and Slomnitsky each purchased Allied Nevada shares during the class period and
6 petitioned to be appointed lead plaintiff in the class action. Heil/Boston purchased a total of
7 119,910 shares (101,110 net shares) during the class period and claimed a total loss of \$638,553.
8 Doc. #17 at 7; *id.*, Ex. B. Slomnitsky purchased a total of 745,613 shares (167,447 net shares)
9 during the class period and claimed a loss of \$238,060.² Doc. #37 at 3, 9. Because each party
10 used a different method to calculate their losses and the losses of the other prospective lead
11 plaintiffs, the Court conducted its own analysis of which party has the largest financial interest in
12 this litigation. The Court held in its November 7, 2014 Order that Slomnitsky was the
13 presumptive lead plaintiff because he lost \$233,437.60 that was directly related to Allied
14 Nevada's August 6, 2013 disclosure, compared to Heil/Boston, which lost \$149,465.81 as a
15 result of the August 6, 2013 corrective disclosure. Doc. #59 at 9, 11. After finding that
16 Slomnitsky met the adequacy and typicality requirements of Federal Rule of Civil Procedure 23,
17 the Court appointed Slomnitsky as lead plaintiff. *Id.* at 15.

18 Heil/Boston filed this Motion for Reconsideration on November 21, 2014, asserting that
19 the Court erred in its prior Order because (1) the Court did not consider losses attributable to the
20 April 30, 2013 partial disclosure of fraud, and (2) the Court did not consider Heil/Boston's
21 purchase price of retained shares. Doc. #70 at 2. The Court did not consider loss caused by the
22 April 30, 2013 press release because in its original motion for appointment as lead plaintiff,
23 Heil/Boston argued that its losses were equal to its *total losses*, without focusing on Allied
24 Nevada's disclosures.³ *See* Doc. #17 at 7. Heil/Boston referred to the April 30, 2013 press
25

26 ² This figure represents the one-day decline in Allied Nevada stock price. Applying the two-day
27 decline in stock price mentioned in the Complaint, Slomnitsky claims a total loss of \$340,240 for
28 purchases during the class period. Doc. #37 at 3.

³ The Court held that Heil/Boston could not claim total losses in its presumptive lead plaintiff
analysis because this would include "what *Dura* sought to prevent: loss figures that take into account not

release, but only to challenge Slomnitsky's calculation. *See* Doc. #36 at 13; Doc. #47 at 6. Heil/Boston calculated its losses based on the total difference between what it spent on Allied Nevada stock and the value retained from the stock, and no party calculated losses that were directly attributable to the April 30, 2013 press release as a corrective partial disclosure, or asked the Court to do so. Accordingly, the Court did not include the April 30, 2013 disclosure in its calculation of losses to designate the presumptive lead plaintiff. Here, the Court considers whether such calculation would yield a more accurate determination of lead plaintiff.

II. Legal Standard

A. Appointment of Lead Plaintiff

The Private Securities Litigation Reform Act ("PSLRA") states that in securities class actions, the court must appoint a lead plaintiff "that the court determines to be most capable of adequately representing the interests of class members." 15 U.S.C. § 77z-1(a)(3)(B)(i). Under the PSLRA, courts adopt a three-step process to determine the lead plaintiff. *In re Cavanaugh*, 306 F.3d 726, 729 (9th Cir. 2002). First, a plaintiff must publicize the pendency of the action "in a widely circulated national business-oriented publication or wire service." 15 U.S.C. § 78u-4(a)(3)(A)(i). The notice must alert the public that "any member of the purported class may move the court to serve as lead plaintiff." 15 U.S.C. § 78u-4(a)(3)(A)(i)(II). Second, the court must select a presumptive lead plaintiff. *See Cavanaugh*, 306 F.3d at 729-30. The court adopts a rebuttable presumption that "the most adequate plaintiff" is the person or group that "has the largest financial interest in the relief sought by the class." 15 U.S.C. § 77z-1(a)(3)(B)(iii)(I)(bb). Third, the court must determine whether the presumptive lead plaintiff meets the requirements of Rule 23 of the Federal Rules of Civil Procedure. 15 U.S.C. § 77z-1(a)(3)(B)(iii)(I)(cc). Rule 23 requires that the representative of a class have claims that are typical of the class, and that the representative can "adequately protect the interests of the class." Fed. R. Civ. P. 23(a).

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just losses caused by the fraud, but also 'changed economic circumstances, changed investor expectations, new industry-specific or firm-specific facts, conditions, or other events, which taken separately or together account for some or all of that lower price.'" Doc. #59 at 8 (citing *Dura*, 544 U.S. at 343).

1 “The ‘most capable’ plaintiff—and hence the lead plaintiff—is the one who has the
2 greatest financial stake in the outcome of the case, so long as he meets the requirements of Rule
3 23.” *Cavanaugh*, 306 F.3d at 729. The PSLRA includes a limitation on damages whereby a
4 plaintiff cannot recover more than “the difference between the purchase or sale price paid or
5 received . . . and the mean trading price of that security during the 90-day period beginning on
6 the date on which the information correcting the misstatement” occurred. 15 U.S.C. § 78u-
7 4(e)(1). To determine which plaintiff has the largest financial stake, courts consider the
8 “recoverable damages” of each party pursuant to *Dura Pharmaceuticals v. Broudo*, 544 U.S. 336
9 (2005). In *Dura*, the Supreme Court held that a court must disregard the purchase price of the
10 stock and only consider losses that are “proximately caused” by the defendant’s
11 misrepresentations. *Dura*, 544 U.S. at 346. Only losses sustained after the misrepresentation
12 “become generally known” are recoverable. *Id.* at 344. This prevents inflated claims of losses
13 that could have been caused “not [by] the earlier misrepresentation, but changed economic
14 circumstances, changed investor expectations, new industry-specific or firm-specific facts,
15 conditions, or other events, which taken separately or together account for some or all of that
16 lower price.” *Id.* at 343. District courts have applied different methods to calculate recoverable
17 losses, but the Ninth Circuit has stated that “the court may select accounting methods that are
18 both rational and consistently applied.” *Cavanaugh*, 306 F.3d at 730 n.4.

19 Once the court determines which plaintiff has the largest financial stake in the outcome of
20 the lawsuit, “the court must appoint that plaintiff as lead, unless it finds that he does not satisfy
21 the typicality or adequacy requirements.” *Cavanaugh*, 306 F.3d at 732. “So long as the plaintiff
22 with the largest losses satisfies the typicality and adequacy requirements, he is entitled to lead
23 plaintiff status, even if the district court is convinced that some other plaintiff would do a better
24 job.” *Id.* “If the plaintiff with the greatest financial stake does not satisfy the Rule 23(a) criteria,
25 the court must repeat the inquiry, this time considering the plaintiff with the next-largest financial
26 stake.” *Id.* at 730.

27 **B. Motion for Reconsideration**

28 “A district court has the inherent power to reconsider and modify its interlocutory orders

prior to the entry of judgment.” *Smith v. Massachusetts*, 543 U.S. 462, 476 (2005) (quoting *United States v. LoRusso*, 695 F.2d 45, 53 (2d Cir. 1982)). However, “a motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law.” *389 Orange Street Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999). “A motion to reconsider must provide a court with valid grounds for reconsideration by: (1) showing some valid reason why the court should consider its prior decision, and (2) setting forth facts or law of a strongly convincing nature to persuade the court to reverse its prior decision.” *Frasure v. United States*, 256 F. Supp. 2d 1180, 1183 (D. Nev. 2003).

III. Discussion

A. Partial Corrective Disclosure

Heil/Boston first argues that the Court erred because it did not consider the decline in Allied Nevada stock price following the April 30, 2013 press release. Heil/Boston argues that the April 30, 2013 disclosures are important because they represented to investors that expansion of the Hycroft Mine “would be implemented in phases and would not be fully operational by January 1, 2015—as previously represented.” Doc. #70-1 at 4. The press release also “included an announcement that the Company would be offering 14 million shares of common stock . . . despite previous assurances that the Hycroft Mine expansion could be funded without additional offerings.” *Id.* at 4-5. Heil/Boston argues that in failing to consider the stock reduction following this disclosure, “the Court incorrectly appointed the movant with the *second* largest financial interest.” *Id.* at 6 (emphasis in original).

Heil/Boston is correct that courts may consider partial corrective disclosures in calculating total recoverable losses. *See, e.g., Metzler Inv. GMBH v. Corinthian Colls., Inc.*, 540 F.3d 1049, 1063 (9th Cir. 2008) (“[T]here is no prohibition against [a plaintiff] alleging loss calculation through a series of disclosures by the Defendants.”); *In re Maxim Integrated Prods., Inc. Sec. Litig.*, 639 F. Supp. 2d 1038, 1048 (N.D. Cal. 2009) (“Loss calculation may be alleged through a series of partial disclosures.”). Based on the allegations in the Complaint, however, the Court is not convinced that the April 30, 2013 press release constitutes a partial corrective

disclosure such that losses after the press release should be considered in the Court's calculation of presumptive lead plaintiff. In relevant part, the April 30, 2013 press release states as follows:

Hycroft Operations Update

Revenue increased 25% in the first quarter of 2013 to \$49.2 million compared with \$39.2 million in the first quarter of 2012 as a result of the increased ounces sold, partially offset by lower average realized selling prices for gold and silver. . .

Production from Hycroft in the first quarter of 2013 was an increase of 17% for gold and 13% for silver as compared to the first quarter of 2012. Sales in the first quarter of 2013 surpassed that of the same period in 2012 by 34% for gold and 36% for silver. When compared to the first quarter of 2012, our 2013 adjusted cash costs were negatively impacted by increased mining and processing costs and lower realized silver prices. **Due to uncommonly inclement weather experienced in January and increased mining costs due to Hitachi shovel maintenance, the ounces were placed on the leach pads at higher than expected costs and negatively impacted our production costs and adjusted cash costs per ounce. We also consumed higher than expected lime and cyanide as we worked to improve leach pad solution properties, which also increased our production costs and adjusted cash costs.**

Doc. #1 ¶63 (emphasis in original).

Courts are often reluctant to consider early disclosures as partial corrective disclosures for purposes of calculating recoverable losses when the statement does not disclose the defendant's fraud and merely presents the possibility for lost revenue. In *In re REMEC Inc. Securities Litigation*, the court held that disclosure of information showing certain profits but also "a decrease in gross profit margin, an increase in operating expenses, an operating loss, and a decrease in cash and short term investments" did not constitute a partial corrective disclosure because the disclosure itself "contained false and misleading information about the company's financial condition, and the [complaint] characterize[d] the statements regarding profitability as additional misrepresentations, not as statements that corrected previous misrepresentations." 702 F. Supp. 2d 1202, 1270 (N.D. Cal. 2010). Similarly, Allied Nevada's April 30, 2013 press release primarily describes the potential for lost profits, and the Complaint states that Allied Nevada's April 30, 2013 Form 10-Q, filed the same day as the press release, "contained materially false and misleading representations about Allied Nevada's risk factors, its management's discussion and analysis, its disclosure controls and false misleading certifications thereon." Doc. #1 ¶67.

1 In *Foster v. Maxwell Technologies*, the court held that an early disclosure was not a
 2 partial corrective disclosure for loss calculation purposes because “although the complaints filed
 3 in the Related Actions mention [the] earnings miss, none of them identify this or any other
 4 announcement prior to the [primary disclosure date] as disclosing, in whole or in part,
 5 [defendant’s] alleged fraud.” 2013 WL 5780424, at *4 (S.D. Cal. Oct. 24, 2013). Similarly, the
 6 April 30, 2013 press release did not disclose Allied Nevada’s alleged fraud concerning the Lewis
 7 leach pad, and it is important to note that statements made by Allied Nevada following the April
 8 30, 2013 press release furthered the company’s fraud. *See, e.g.*, Doc. #1 ¶75 (noting that the May
 9 2013 SPO registration statements did not disclose the material defects and production problems
 10 associated with the Lewis leach pad). The Court is careful not to include a supposed disclosure
 11 in its loss calculation because considering losses prior to the central corrective disclosure risks
 12 exactly what *Dura* sought to prevent: loss figures that take into account not just losses caused by
 13 the fraud, but also “changed economic circumstances, changed investor expectations, new
 14 industry-specific or firm-specific facts, conditions, or other events, which taken separately or
 15 together account for some or all of that lower price.” *Dura*, 544 U.S. at 343.

16 It is also important to note that the April 30, 2013 disclosure is not nearly as definite as
 17 the August 6, 2013 disclosure. The Complaint describes the April 6, 2013 disclosed as follows:

18 On August 6, 2013, the Company issued a press release announcing its financial
 19 results from the 2013 quarter, the period ended June 30, 2013 and the indefinite
 20 deferral of the Hycroft mill construction. Moreover, Defendants disclosed that: (i)
 21 the Company’s operations consumed \$18.7 million in cash, and (ii) Allied
 22 Nevada’s had higher than anticipated \$775 adjusted cash costs per ounce of gold
 23 sold in the second quarter of 2013 (an increase of more than 27% from the 2013
 24 first quarter), which was primarily attributable to costs associated with the
 remediation of the Lewis leach pad, reduced silver sales, increased maintenance
 costs for older loading equipment, and inefficient utilization of the mobile fleet.
 As a result of these factors, Allied Nevada announced that it expected its adjusted
 cash costs per ounce of gold sold for the 2013 fiscal year to increase to a range
 between \$800 to \$825 per ounce of gold sold.

25 Doc. #1 ¶91. As opposed to the April 30, 2013 press release, this disclosure unambiguously
 26 announced the *indefinite* deferral of the Hycroft mill construction. It also provided specifics
 27 about the company’s increased costs attributable to problems with the Lewis leach pad, and the
 28 Complaint does not allege that it included misrepresentations designed to encourage further or

1 continued investment. Additionally, the April 30, 2013 press release described problems that had
2 previously impacted Allied Nevada production, and had previously been disclosed to investors.
3 See Doc. #1 ¶4 (noting that in early 2013, Allied Nevada stated that the company had previously
4 missed its production guidance because “‘record cold temperatures’ were ‘adversely affecting
5 how much solution’” Allied Nevada could pump onto the leach pads). The Court finds that
6 while the April 30, 2013 press release stated the potential for serious problems with the Hycroft
7 project, the April 6, 2013 press release was the operative disclosure of Allied Nevada’s alleged
8 fraud because it stated the indefinite deferral of the Hycroft mill construction and provided new
9 specifics of the alleged fraud to investors. See *Berson v. Applied Signal Tech., Inc.*, 527 F.3d
10 982, 987 (9th Cir. 2008) (“Learning that stop-work orders *might* be issued is quite different from
11 knowing they were *in fact* issued. One indicates risk, the other uncertainty. It goes without saying
12 that investors would treat the two differently.”).

13 Heil/Boston is correct that courts have stated that calculations based only on shares
14 retained at the date of the last corrective disclosure “are not appropriate in cases where multiple
15 partial corrective disclosures are alleged over time.” *Mulligan v. Impax Labs., Inc.*, No. 13-1037,
16 2013 WL 3354420, at *6 (N.D. Cal. July 2, 2013). Despite this statement, however, the
17 *Mulligan* court ultimately held that the retained shares method was most appropriate because it
18 had “the advantage of looking to losses experienced due to the shares that the plaintiff was
19 holding at the time the fraud was disclosed, and thus focusing on losses caused when stock
20 purchased at artificially inflated prices decreases in value due to the disclosure of the fraud.” *Id.*
21 The court added that this “metric therefore excludes losses caused by normal market fluctuations
22 prior and related to the disclosure of the fraud.” *Id.*

23 The Court has discretion to “select accounting methods that are both rational and
24 consistently applied.” *Cavanaugh*, 306 F.3d at 730 n.4. Here, the Court finds that the most
25 accurate calculation of losses directly attributable to Allied Nevada’s fraud disclosure is based on
26 shares retained or sold after the August 6, 2013 press release, when the Hycroft project was
27 indefinitely suspended and Allied Nevada provided investors new specifics regarding the Lewis
28 leach pad defects and the company’s financial problems.

B. Purchase Price Consideration

Heil/Boston also argues that the court's calculation for presumptive lead plaintiff "failed to properly take into consideration the purchase price of retained shares, as required by the PSLRA's limitation on damages." Doc. #70-1 at 7. The PSLRA states that when shares are sold prior to the 90-day period following a corrective disclosure, damages "shall not exceed the difference between the purchase or sale price paid or received . . . and the mean trading price of the security during the period beginning immediately after" the corrective disclosure and ending when the plaintiff sells or repurchases the security. 15 U.S.C. § 78u-4(e)(2). To calculate Heil/Boston's recoverable damages, the Court multiplied the number of retained shares by the difference between the August 5, 2013 closing price and the greater of the actual sale price and the 90-day trailing average. *See* Doc. #59 at 8. Heil/Boston argues that "by failing to take into consideration the actual purchase prices of the stock, the Court's methodology did not properly apply the first component of the PSLRA's limitation on damages." Doc. #70-1 at 7. Accordingly, Heil/Boston argued that the Court "should have started with *the lesser of* the purchase price of the retained shares and the closing price prior to the corrective disclosure . . . and subtracted from that the greater of the actual sale price and the trailing average." *Id.* at 8.

To provide a more accurate calculation, Allied Nevada's expert Kenneth Kotz ("Kotz") followed the Court's methodology for calculating losses with two changes: Kotz used (1) "the higher of the actual sale price and rolling average price through the date of sale as the price to calculate losses for shares sold during the 90-day period," and (2) "the lower of the August 5, 2013 price and the actual purchase price for the calculation of approximate losses" pursuant to the PSLRA.⁴ Doc. 70-3, Ex. A at 7-8. Based on this updated methodology, Kotz calculated that Heil/Boston's losses caused by the August 6, 2013 disclosure totaled \$145,706 and Slomnitsky's

⁴ In its prior Order, the Court was unable to calculate the rolling average price through the date of each sale because the parties had not submitted the daily closing prices of Allied Nevada stock. *See* Doc. #59 at 11. Although the Court still has not reviewed the daily closing prices of Allied Nevada stock over the class period and in the ninety days following the August 6, 2013 disclosure, the Court accepts Kotz's calculations for the purposes of this Order.

1 losses caused by the August 6, 2013 disclosure totaled \$265,057.⁵ *Id.*, Ex. 6. The Court accepts
2 these calculations as accurate based on the PSLRA for the purposes of this Order.

3 Even with the updated figures, Slomnitsky remains the presumptive lead plaintiff because
4 his losses attributable to the August 6, 2013 corrective disclosure are larger than Heil/Boston's.
5 Heil/Boston therefore relies on the fact that losses following the April 30, 2013 press release
6 would increase its total losses to \$275,105—based on Kotz's calculations⁶—while Slomnitsky's
7 losses would remain at \$265,057 because Slomnitsky did not begin investing in Allied Nevada
8 until after the April 30, 2013 press release. *See id.* Accordingly, Heil/Boston would become the
9 presumptive lead plaintiff if the Court accepted the April 30, 2013 press release as a partial
10 corrective disclosure, and Kotz's calculations for the losses caused by that disclosure. However,
11 the Court has found that Heil/Boston has failed to produce new evidence that the Court must
12 consider losses caused by the April 30, 2013 press release, and in fact, that considering such
13 losses would contravene the loss limitation described by *Dura*. Accordingly, the Court declines
14 to reconsider its November 7, 2014 Order and reaffirms Slomnitsky as the lead plaintiff in this
15 class action.

16 **IV. Conclusion**

17 IT IS THEREFORE ORDERED that Heil/Boston's Motion for Reconsideration (Doc.
18 #70) is DENIED.

19 IT IS SO ORDERED.

20 DATED this 8th day of January, 2015.

21 
22 LARRY R. HICKS
23 UNITED STATES DISTRICT JUDGE
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27 ⁵ These figures are based on a "first-in first-out" ("FIFO") calculation. Under Kotz's "last-in
28 last-out" ("LIFO") calculation, Heil/Boston would have \$149,456 in losses based on the August 6, 2013
disclosure, compared to Slomnitsky's \$278,158. Doc. #70-3, Ex. 6.

⁶ \$275,105 under a FIFO calculation, or \$278,158 under a LIFO calculation. Doc. #70-3, Ex. 6.